

All communications respecting this case should identify it by number and names of parties.



**U.S. DEPARTMENT OF COMMERCE
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PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Patentee: Oppermann et al.
Serial No.: 07/995,345
Filed: 12/22/92, now Patent
No. 5,258,494 issued
11/02/93
For: OSTEOGENIC PROTEINS
Accorded Benefit of: U.S.
Serial Nos. 07/621,988
filed 12/04/90 and
07/315,342 filed 02/23/89,
now Patent No. 5,011,691
issued 04/30/91

The case referred to above has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with other cases hereafter specified. Attention is directed to the fact that this interference is declared pursuant to 37 C.F.R. § 1.601 *et seq.*, effective February 11, 1985 (49 F.R. 48416. 1050 O.G. 385). The interference is designated as No. 103,424.

By direction of the Commissioner of Patents and Trademarks and as required by 35 U.S.C. § 135(c), notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference."

INTERFERENCE DIGEST

Interference No. 103,424 Paper No. 42
Name, Oppermann et al.
Serial No. 07/995,345 Patent No. 5,258,494 issued 11/02/93
Title, OSTEOGENIC PROTEINS
Filed, 12/22/92
Interference with Oppermann et al. v. Wang et al.

DECISION ON MOTIONS

Examiner-in-Chief, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, Interference Favorable Dated, 8/20/96

Court, _____ Dated, _____

REMARKS

The cases involved in this interference are:

Junior Party

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Serial No.: 07/995,345 filed 12/22/92, now Patent No. 5,258,494
issued

For: OSTEOGENIC PROTEINS

Assignees: Stryker Corporation; Kalamazoo, MI

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Associate Attorney: None

Accorded Benefit of: U.S. Serial Nos. 07/621,988 filed 12/04/90
and 07/315,342 filed 02/23/89, now Patent
No. 5,011,691 issued 04/30/91

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Serial No.: 07/315,342 filed 02/23/89, now Patent No. 5,011,691
issued 04/30/91

For: OSTEOGENIC DEVICES

Assignees: None

299

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Serial No.: 07/655,579 filed 03/18/91

For: NOVEL BMP-2 PRODUCTS

Assignees: None

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Accorded Benefit of: U.S. Serial Nos. 07/179,100 filed 04/08/88,
now Patent No. 5,013,649 issued 05/07/91,
and 07/028,285 filed 03/20/87

Address: Legal Affairs
Genetics Institute, Inc.
87 CambridgePark Drive
Cambridge, MA 02140

295

Count 1

An isolated osteogenic protein or an osteogenic device for implantation in a mammal comprising said osteogenic protein dispersed within a biocompatible matrix wherein the osteogenic protein comprises a biologically active dimer capable of inducing bone formation where each polypeptide chain has an amino acid sequence sufficiently duplicative of an amino acid sequence selected from the group consisting of the following sequences:

1 10 20
CKRHPLYVDFS-DVGWNDWIVAPPGYHAF

(1) 30 40 50 60
YCHGECPPFLADHLNSTN H-AIVQTLVNSVNS-K-I

70 80 90 100
PKACCVPTELSAISMLYLDENEKVVVLKQDMVVEGCGCR, (CBMP-2a)

His Pro Leu Tyr Val Asp Phe Ser Asp Val Gly Trp Asn Asp

Trp Ile Val Ala Pro Pro Gly Tyr His Ala Phe Tyr Cys His Gly

(2) Glu Cys Pro Phe Pro Leu Ala Asp His Leu Asn Ser Thr Asn His
Ala Ile Val Gln Thr Leu Val Asn Ser Val Asn Ser Lys Ile Pro
Lys Ala Cys Cys Val Pro Thr Glu Leu Ser Ala Ile Ser MET Leu
Tyr Leu Asp Glu Asn Glu Lys Val Val Leu Lys Asn Tyr Gln Asp
MET Val Val Glu Gly Cys Gly Cys Arg, (BMP-2a or BMP-2)

(3) 1 10 20 30 40 50 60
CRRHSLYVDFS-DVGWNDWIVAPPGYQAF YCHGDCPPFLADHLNSTN H-AIVQTLVNSVNS-S-IP

70 80 90 100
KACCVPTELSAISMLYLDKEYDKVVLKQEMVVEGCGCR, (CBMP-2b) and

His Ser Leu Tyr Val Asp Phe Ser Asp Val Gly Trp Asn Asp

Trp Ile Val Ala Pro Pro Gly Tyr Gln Ala Phe Tyr Cys His Gly

Asp Cys Pro Phe Pro Leu Ala Asp His Leu Asn Ser Thr Asn His

(4) Ala Ile Val Gln Thr Leu Val Asn Ser Val Asn Ser Ser Ile Pro

296

Lys Ala Cys Cys Val Pro Thr Glu Leu Ser Ala Ile Ser MET Leu
Tyr Leu Asp Glu Tyr Asp Lys Val Val Leu Lys Asn Tyr Gln Glu
MET Val Val Glu Gly Cys Gly Cys Arg, (BMP-2b or BMP-4).

The claims of the parties which correspond to this
count are:

Oppermann et al.: Claims 1-7, 10-15
(P.N. 5,258,494)

Oppermann et al.: Claims 1, 2, 6-7, 16-22 and 32-35
(P.N. 5,011,691)

Wang et al.: Claims 1, 2, 10, 22, 24, 25, 27,
29, 30, 32, 34 and 35



Marc L. Caroff
Administrative Patent Judge
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MLC:clm

